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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/647,832	08/25/2003	Marcus F. Doemling	12729/238	3054

56020 7590 09/06/2007

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EXAMINER	
PATEL, CHIRAG R	

ART UNIT	PAPER NUMBER
2141	

MAIL DATE	DELIVERY MODE
09/06/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/647,832	DOEMLING ET AL.	
	Examiner	Art Unit	
	Chirag R. Patel	2141	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *06 July 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-26* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-26* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Response to Arguments

Applicant's arguments with respect to claims 1-26 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8, 11-21, and 23-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Merriman et al. – hereinafter Merriman (US 5,948,061).

As per claim 1, Merriman discloses a method for limiting the delivery of content in a communications network environment comprising:

establishing the assumed frequencies with which subsets of a set of content elements have been viewed by individual users of the communications network environment; (Col 6 line 12 – Col 7 line 14)

evaluating the assumed frequencies with regard to predetermined frequency targets; determining whether or not the evaluation of the assumed frequencies warrants the delivery of alternate content; (Col 6 line 12 – Col 7 line 14)

providing a mechanism for the delivery of the alternate content; and (Col 6 line 12 – Col 7 line 14)

updating data stored in a communications network storage device to aid in determinations of whether the alternate content should be shown. (Col 6 line 12 – Col 7 line 14)

As per claims 2 and 15, Merriman discloses the method of claim 1, wherein the mechanism for the delivery of the alternate content enables publishers in the communications network environment to provide the alternate content. (Col 6 line 12 – Col 7 line 14)

As per claims 3 and 16, Merriman discloses the method of claim 2, wherein a publisher within the communications network environment is provided with a mechanism to provide the alternate content that is independent of other publishers within the communications network environment. (Col 2 line 59 – Col 3 line 4; Affiliates are one or more entities that generally for a fee contract with the entity providing the advertisement server permit third party advertisements to be displayed on their web sites, represent more than 1 publishers, which is independent)

As per claims 4 and 17, Merriman discloses the method of claim 1, wherein the data used in determining whether or not the frequency evaluation of the assumed frequencies with regard to predetermined frequency targets warrants the delivery of alternate content is stored in a web browser of an individual user content viewers web browser. (Col 9 line 5-16)

As per claims 5 and 18, Merriman discloses the method of claim 1, wherein the data used in determining whether or not the frequency evaluation of the assumed frequencies with regard to predetermined frequency targets warrants the delivery of alternate content is stored on a communications network storage device other than in a web browser of an individual user. (Col 9 line 5-16)

As per claims 6 and 19, Merriman discloses the method of claim 1, wherein an absence of available data for determining whether or not the frequency evaluation of the assumed frequencies with regard to predetermined frequency targets warrants the delivery of alternate content is interpreted in determining whether or not the delivery of alternate content is warranted. (Col 5 lines 34-49)

As per claims 7 and 20 , Merriman discloses the method of claim 2, wherein the alternate content is provided by a mechanism selected from the group consisting of:

a. Defining a Uniform Resource Locator (URL) pointing to the location where the alternate content is intended to be retrieved from, (Col 3 lines 5-63; Col 7 lines 15-31)

b. Defining a Uniform Resource Locator (URL) pointing to programming code that is intended to be retrieved and executed with the purpose of causing the display of the alternate content, (Col 3 lines 5-63; Col 7 lines 15-31)

c. Defining the alternate content within a content container, such as a web page, (Col 3 lines 5-63; Col 7 lines 15-31)

d. Defining programming code within the content container, such as a web page, that will cause the display of the alternate content, and(Col 3 lines 5-63; Col 7 lines 15-31)

e. Redirecting the browser to a location within the publisher's authority, which enables the publisher to return the alternate content in response. (Col 3 lines 5-63; Col 7 lines 15-31)

As per claims 8 and 21, Merriman discloses the method of claim 1, wherein the delivery of the alternate content can be aborted and the subsets of the set of content elements can instead be delivered. (Col 6 line 12 – Col 7 line 14)

As per claims 11 and 24, Merriman discloses the method of claim I, wherein the content is an advertisement. (Col 2 lines 7-15)

As per claims 12 and 25, Merriman discloses the method of claim I, wherein the subset of the set of content elements is a proper subset of the set of content elements. (Col 6 line 12 – Col 7 line 14)

As per claim 13, Merriman discloses a method for limiting the delivery of content in a communications network environment comprising:

establishing the assumed frequencies with which subsets of a set of content elements have been viewed by individual users of the communications network environment for subsets of a set of publishers; (Col 1 line 59 – Col 2 line 4; Col 6 line 12 – Col 7 line 14)

evaluating the assumed frequencies with regard to predetermined frequency targets; (Col 6 line 12 – Col 7 line 14)

determining whether or not the evaluation of the assumed frequencies warrants the delivery of alternate content; (Col 6 line 12 – Col 7 line 14)

providing a mechanism for the delivery of the alternate content; and

updating data stored in a communications network storage device to aid in determinations of whether the alternate content should be shown. (Col 6 line 12 – Col 7 line 14)

As per claim 14, Merriman discloses the method of claim 13, wherein the determination of whether the delivery of the alternate content is warranted for a particular user is based on the evaluation of the assumed frequencies with which particular subsets of a set of content elements have been viewed by the particular user within a particular subset of the set of publishers. (Col 6 line 12 – Col 7 line 14)

As per claim 26, Merriman discloses the method of claim 13, wherein the subset of a set of publishers is a proper subset of the set of publishers. (Col 1 line 59 – Col 2 line 4)

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 9-10, 22 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Merriman et al. – hereinafter Merriman (US 5,948,061) in view of Alberts (US 5,937,392).

As per claims 9 and 22, Merriman discloses the method of claim 8, and the process of determining whether or not the frequency evaluation of the assumed frequencies with regard to predetermined frequency targets warrants the delivery of the alternate content, and the delivery of the alternate content. (Col 6 line 12 – Col 7 line 14) Merriman fails to disclose a. a time delay in the process of determining whether or not the frequency evaluation of the assumed frequencies with regard to predetermined frequency targets warrants the delivery of the alternate content, b. a time delay in the delivery of the alternate content, c. an error in the process of determining whether or not the frequency evaluation of the assumed frequencies with regard to predetermined frequency targets warrants the delivery of the alternate content, and d. an error in the delivery of the alternate content. Alberts discloses a. a time delay in the process of determining whether or not the frequency evaluation of the assumed frequencies with

regard to predetermined frequency targets warrants the delivery of the alternate content, b. a time delay in the delivery of the alternate content, c. an error in the process of determining whether or not the frequency evaluation of the assumed frequencies with regard to predetermined frequency targets warrants the delivery of the alternate content, and d. an error in the delivery of the alternate content. (Col 4 lines 11-26; Col 4 line 63 – Col 5 line 28) At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to disclose a time delay and an error in the disclosure of Merriman. The motivation for doing do would have been to cause the appropriate number of ads to be served and to be able to adapt to different situations in a flexible manner. (Col 1 lines 49-52)

As per claims 10 and 26, Merriman discloses the method of claim of claim 1. Merriman fails to disclose wherein the alternate content is not delivered. Alberts discloses wherein the alternate content is not delivered. (Col 5 lines 29-40, Figure 6A) At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to discloses wherein the alternate content is not delivered in the disclosure of Merriman. The motivation for doing do would have been to cause the appropriate number of ads to be served and to be able to adapt to different situations in a flexible manner. (Col 1 lines 49-52)

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chirag R Patel whose telephone number is (571)272-7966. The examiner can normally be reached on Monday to Friday from 7:30AM to 4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia, can be reached on (571) 272-3880. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information

for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pairdirect.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free).

Chirag Patel
Patent Examiner
AU 2141

C.P.

C.P.

JASON CARDONE
SUPERVISORY PATENT EXAMINER